



“Silence of the Law”

Best Practices for Montana Notaries

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What Do We Mean?

“When the law is silent”

Relevant sources of law do not address a particular point or circumstance.

“Best practices”

A technique or methodology that, through experience and research, has reliably led to a desired result.

Best Practices - Characteristics

1

Widely adopted

2

No conflict with your statutes or rules

3

Uphold ethical notarial conduct

4

Compliant result

Best Practices - Benefits

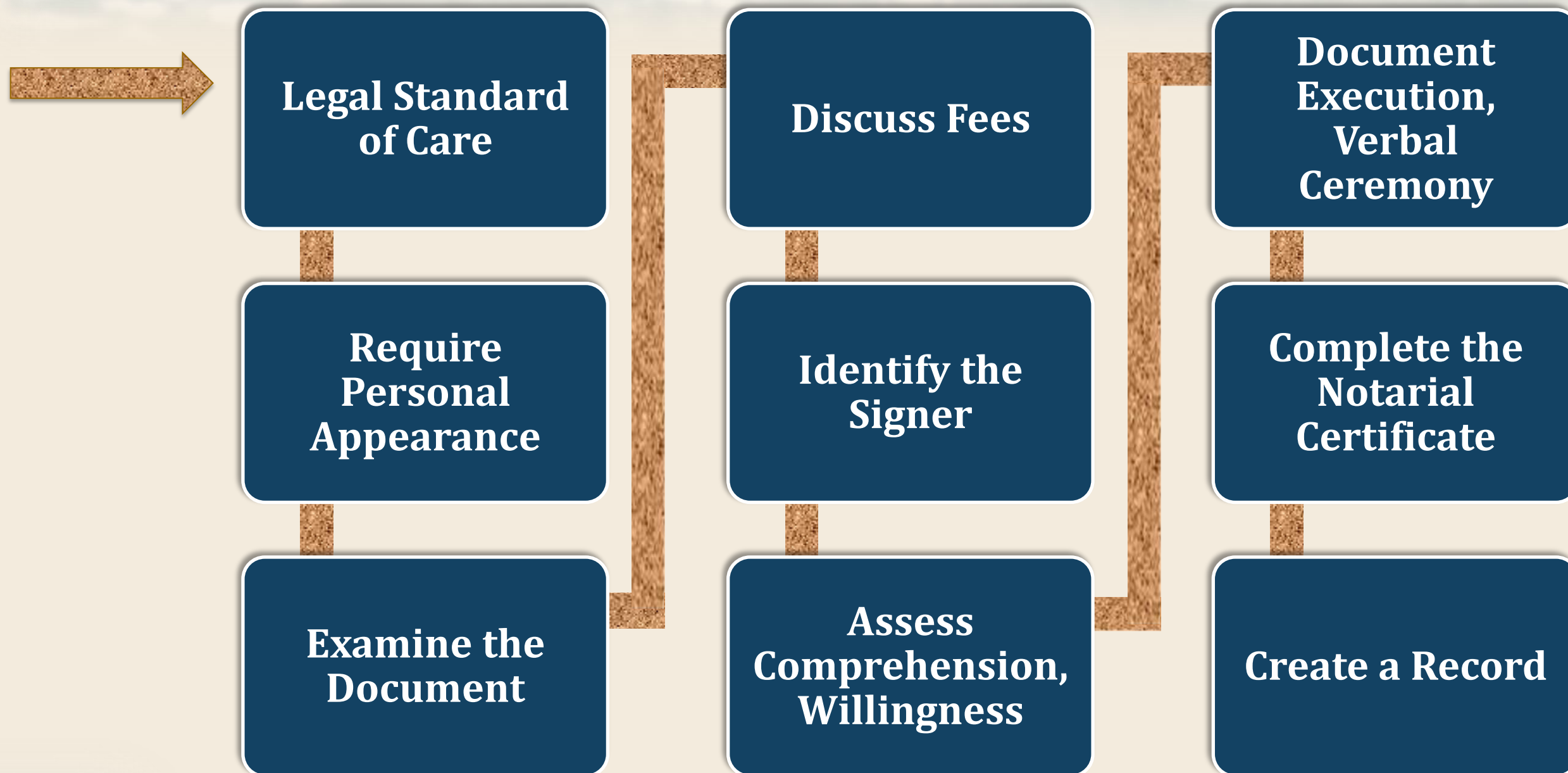


Provide guidance when laws and rules do not explicitly address the circumstance.

Promote uniformity in notarial practices.

Provide an informed path to notarization within the boundaries of reasonable care.

Notarial Act Progression



Plus Challenging Circumstances, Notaries & Employers, and more

I. Legal Standard of Care – “Reasonable”

Law/rules:



Not addressed:

- Definition of reasonable care
- How to achieve it
- Is perfect performance required?

II. Require Personal Appearance

Law/rules:

A signer may appear physically or [subject to specific circumstances] by means of audio-video communication technology

[MCA 1-5-603(7)(a)]

Not addressed:

- View – unobstructed, close
- What the notary must observe
- Duration of signer presence
- What the entire ceremony includes
- Representative-capacity signer

III. Examine the Document

Law/rules:



Not addressed:

- Reasons to examine document
 - Complete – no blanks, missing pages
 - Document type – accurate journal description
 - Observe the required notarial act
 - Observe who is the named signer(s)
 - Review signature if previously signed

IV. Discuss Fees

Law/rules:

Maximum \$10 fee (specified notarial acts)

Post fee schedule (English) if intending to charge fees

Travel fee allowed; conditions apply

Notary and private employer may agree that employer keeps notary fees

Gov't employer may collect/keep fees from notarizations related to scope of business
[MCA 1-5-626 (1)-(5)]

Record fee in journal
[MCA 1-6-618 (3)(g)]

Not addressed:

- Provide fee list if away from posted list location?
- After-hours fees of private and governmental notaries – theirs?
- Compensation for travel TIME?
- Itemize fees in journal entry

V. Identification, Competence, Willingness

Law/rules:

Personal knowledge or satisfactory evidence (documentary identification or credible witness)

Notary may ask for additional information or ID credentials

[MCA 1-5-603 (1)-(3); (8)-(10)]

Not addressed:

- Is personal knowledge suitable for this signer?
- Should a credible witness be used?
- Is the notary guaranteeing correct identification?
- What is suitable “additional” information to satisfactorily identify the signer?

V. Identification, Competence, Willingness

Law/rules:

"Acknowledgment" means a declaration by an individual before a notarial officer that the individual has willingly signed a record for the purposes stated in the record...

[MCA 1-5-602 (1)]

Not addressed:

- Is a mental competence assessment required?
 - How to conduct assessment
 - How to journalize assessment
- Is a willingness assessment required?
 - How to conduct
 - How to journalize

VI. Document Execution, Verbal Ceremony

Law/rules:

Signature made in presence of notary for oath/affirmation, signature witnessing

Signature acknowledged in presence of notary
[MCA 1-5-610 (1)-(4)]

“Signature” - a tangible symbol or an electronic signature that evidences the signing of a record.
[MCA 1-5-602 (12);

- Tangible symbol
- Electronic sound, symbol or process
- Signature made by third party at direction of the signer

Not addressed:

- May signer use signature stamp?
- Signature’s name variation... matches document, or ID?
- Relationship of certificate to signature

VI. Document Execution, Verbal Ceremony

Law/rules:

Statutory certificate language [MCA 1-5-610 (1)-(3)] indicates that signer acknowledged signature; swore to truth of document contents; or affirmed truth of document contents

Presumption of a verbal exchange

Not addressed:

- What words to use
- When to administer
- Should corporal elements be used (*raising right hand, etc.*)
- Effect if no verbal ceremony administered
- Record fact of verbal ceremony in journal



VII. Complete the Notarial Certificate (1)

Law/rules:

A notarial act must be evidenced by a certificate signed and dated by a notarial officer

[MCA 1-5-609 (1)]

Short forms indicate location of notary signature, official stamp

[MCA 1-5-610 (1)-(6)]

Not addressed:

- Add'l placement issues, notary signature
- Add'l placement issues, official stamp
- When to affix official stamp
- Smudged, illegible official stamp imprint
- Notary responsible for verifying official stamp format compliance
- Duty to obtain new official stamp upon name, residence change

VII. Complete the Notarial Certificate (2)

Law/rules:

A notarial officer may subsequently correct any information included on or omitted from a certificate executed by that notarial officer. A change or correction may not be made to the impression of a notarial seal or the notarial stamp.

[MCA 1-5-609 (4)]

Not addressed:

- Details, issues when correcting notarial certificate
- Should correction be dated, initialed?
- Must signer or someone else request correction?
- Can any element be corrected?
- Journalize correction
- Inform anyone?



VIII. Create a Journal Record

Law/rules:

Journaling of every notarial act required, specified elements

- Contemporaneously with notarial act
- Tangible or electronic journal
- One or more journals allowed
- Retain 10 years after performance of last act entered into the journal

[MCA 1-5-618 (1)-(8)]

Not addressed:

- Additional information that should be journalized
- Multiple journal spaces/entries if needed
- Signers using mark or third party to sign



IX. Proofread

Law/rules:



Law/rules don't address:

- Proofread the completed notarial certificate and journal entry
- Consistent with reasonable care
- “A task twice done is best done”

X. Challenging Circumstances

Law/rules:



Law/rules don't address:

- Signers with apparent diminished capacity
- Notarizing in hospital, nursing home, hospice
- Notarizing high-value documents
- Notarizing with interested parties in attendance
- Strangers – considerations
- Language issues

XI. Notaries, Employers, Supervisors

Law/rules:

Fees - remember earlier discussion

Stamping device - a notary public is responsible for the security of the stamping device and may not allow another individual to use it to perform a notarial act.

[MCA 1-5-617 (1)]

Law/rules don't address:

- Effect if employer retains fee
- Employer/supervisor is also a notary
- Employer/supervisor may not possess stamping device, journal
- Employer/supervisor may not control details of notarization
- Employer/supervisor should not attend notarization



XII. Conflicts of Interest

Law/rules:

Notary may not notarize a record in which he/she is individually named or from which the notary will directly benefit by a transaction involving the record [MCA 1-5-625 (1)(b)]

A notary public who is a partner, stockholder, director, officer, or employee of a partnership or corporation and is individually named in the record or who signs a record as a representative of that partnership or corporation may not notarize the signature of any individual on that record [MCA 1-5-625 (2)]

Law/rules don't address:

- Family members – none excluded
- Notarizing for clients
 - Notary has drafted, prepared, consulted, reviewed document
- Financial interest
- Beneficial interest



XIII. Notary Ethics

Law/rules:

Grounds to deny or sanction - an act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

Use of false or misleading advertising or representation by the notary public representing that the notary public has a duty, right, or privilege that the notary does not have
[MCA 1-5-621(f)]

Non-attorney notary's disclosure in advertising [MCA 1-5-625 (4)(a)]

Law/rules don't address:

- Montana notary's ethical standards
- What constitutes false, deceptive advertising?
- Unlicensed practice of law
 - What constitutes “legal advice”?

Conclusion

Best Practice Characteristics

- Widely adopted
- No conflict with statutes or rules
- Uphold ethical conduct
- Compliant outcome

Be Informed

- Ongoing education is **ESSENTIAL**

Professional Growth

- Act on opportunities for professional support and development



Thank you!

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Presented April 20, 2018